

Exhibit No. 3Date 1-26-07Bill No. SB 32Amendments to Senate Bill No. 32  
1st Reading Copy

Requested by Senator Trudi Schmidt

For the Senate Public Health, Welfare and Safety Committee

Prepared by Lisa Mecklenberg Jackson  
January 25, 2007 (1:40pm)

1. Title, page 1, line 5.

**Strike:** "AUTHORIZING"**Insert:** "ALLOWING"**Strike:** "OR LONG-TERM CARE"

2. Title, page 1, line 6.

**Strike:** "TO ENTER"**Insert:** "ACCESS TO"

3. Title, page 1, line 6.

**Strike:** "AT ANY TIME NECESSARY"**Insert:** "AFTER NORMAL VISITING HOURS WITH THE APPROVAL OF THE  
LONG-TERM CARE OMBUDSMAN"

4. Page 1, line 12.

**Strike:** "The"**Insert:** "Subject to subsection (2), the"

5. Page 1, line 17.

**Following:** "ombudsman"**Insert:** "during normal visiting hours and to the long-term care  
ombudsman"

6. Page 1, lines 17 and 18.

**Strike:** "that" on line 17 through "considers" on line 18**Insert:** ". A local ombudsman may have access after normal  
visiting hours with approval, directions, and oversight of  
the long-term care ombudsman when"

Explanation - If the amendment passes, the bill would read like  
this: AN ACT ALLOWING THE LOCAL OMBUDSMAN ACCESS TO A LONG-TERM  
CARE FACILITY AFTER NORMAL VISITING HOURS WITH THE APPROVAL OF  
THE LONG-TERM CARE OMBUDSMAN

52-3-604 (1) Subject to subsection (2), the long-term care  
ombudsman or local ombudsman must have access without advance  
warning notice to any long-term care facility, including private  
access to any resident, for the purpose of meeting with  
residents, investigating and resolving complaints, and advising  
residents on their rights.

(2) Access must be granted to the long-term care ombudsman  
or local ombudsman during normal visiting hours and to the long-  
term care ombudsman at any time. A local ombudsman may have

access after normal visiting hours with approval, directions, and oversight of the long-term care ombudsman when necessary to perform the duties described in 52-3-603.  
(3)

- END -

**Prepared for SENATE PUBLIC HEALTH WELFARE AND SAFETY  
COMMITTEE  
REGARDING SENATE BILL 32**

**LONG TERM CARE OMBUDSMAN PROGRAM  
SENIOR AND LONG TERM CARE DIVISION  
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES  
JANUARY 2007**

**OMBUDSMAN DESCRIPTION:**

The Older American Act (thru the guidance offered by the Administration on Aging), states that the State agency on aging is responsible for the Ombudsman program; there has to be a full-time State Ombudsman and local ombudsman (designated by the State Ombudsman) carry out the functions. In Montana, the State Long Term Care Ombudsman is housed in the Office on Aging within the Senior and Long Term Care Division of the Department of Public Health and Human Services. The Office on Aging contracts with the 10 Area Agencies on Aging to provide ombudsman services at the local level. The State Long Term Care Ombudsman has the ultimate responsibility for compliance with the Administration on Aging requirements for the Ombudsman program, and as such provides oversight for all activities carried out by the ombudsman program in the State.

Ombudsmen serve as advocates for all residents of long-term care facilities, including nursing homes, assisted living and swing beds within Critical Access Hospital. As required under the Older Americans Act, their main focus is assisting residents and/or their legal representative in resolving problems or complaints concerning the health, safety, welfare or rights of residents, while in a long-term care facility. Ombudsmen provide technical assistance to facilities regarding discharge planning, eviction notices, resident rights and complex legal issues. The ombudsmen are not regulatory agents, but are advocates for all residents of long-term care facilities.

Services are provided at the local level by 13.45 FTE, which is made up of 5 Regional Ombudsman (5 FTE), 27 Certified Local Ombudsman (8.45 FTE) and 1 Friendly Visitor. While the State Ombudsman is responsible for the on-going training and certification of Regional and Local Ombudsman, they are hired and supervised by the local Area Agencies on Aging. All Ombudsmen are certified (45 hours for Local and 60 hours for Regional) and receive regular training on federal and state regulations, resident rights information as well as techniques for complaint, investigation and resolution.

Senate Bill 32 does not add additional ombudsman nor does it add additional funding for the ombudsman program. It does expand the hours an ombudsman may have access to a long term care facility.

The Senior and Long Term Care Division has asked for an additional ombudsman position (1 FTE) in the Aging Services Budget in HB2 to add additional capacity at the state level for the ombudsman program.

SB32, with the amendment, allows the local ombudsman access during regular visiting hours and provides oversight, direction and approval by the State Ombudsman if a local ombudsman needs access to a facility after regular visiting hours. This allows the State Ombudsman to determine if the local ombudsman is the one who should be investigating the complaint or allegation or if it should be turned over to a regulatory agency such as DPHHS's Licensing and Certification. It also ensures that the State Ombudsman is aware of the issue or compliant and can monitor the situation and the reports regarding it.

#### **STATISTICS:**

The majority of funds for the Ombudsman program come from the federal Older Americans Act. In FFY 2005, Certified Ombudsman made 3500 visits to licensed facilities. Moreover, they handled over 700 official cases involving over 1300 complaints. Ombudsman provided 1200 consultations to facilities regarding issues and problems; answered over 1800 informational calls, attended 273 resident or family council meetings, participated in 64 state surveys and provided 75 hours of training at facilities. The total cost of the Ombudsman program at the state and local level during FY 2006 was approximately \$ 656,791.

#### **ISSUES:**

1. **Increased Demand for Ombudsman Services:** As more and more people move into Assisted Living, Nursing Homes and other community settings, there is an exponential demand for Ombudsman services. Thirty six new assisted living facilities have opened since 2002, bringing the total of Assisted Living facilities in the state to 187. In addition, 42 of the 43 the MT Critical Access Hospitals (CAH) now provide skilled nursing services through their swing beds. With the increase in long term care beds, comes an increased demand for Ombudsman services statewide.

Senate Bill 32 and the proposed amendment allow more flexibility and access to Ombudsman with the language that refers to "normal visiting hours" and the deletion of 9 AM – 6 PM. Given the variety of issues residents and their legal representatives are asking the Ombudsman program to address, this flexibility will allow them to perform the duties as outlined in Montana law and the Older Americans Act.

2. Access to Ombudsman services: While, the Ombudsman program was not established to provide or serve as an emergency service, the name and telephone number of the Local Ombudsman is posted in every facility. Residents and their families are provided a toll free number, as well as a local phone number in order to contact the Ombudsman.

The proposed amendment of SB 32 identifies that the Local Ombudsman, with the permission of the State Ombudsman, can enter facility after normal visiting hours. The purpose for reviewing the case with the State Ombudsman (or in the absence of the State Ombudsman, a Regional Ombudsman will be designated) is to determine if the Ombudsman is the correct agency to respond to the issue. After reviewing the case with the State Ombudsman, it may be determined that the referral may be more appropriately addressed by the Licensing or Certification Bureau of the Quality Assurance Department, the Medicaid Fraud Unit of the Attorney General's office, Adult Protective Services or local law enforcement.